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# HOUSE BILL No. 1425

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-43-5-5.

**Synopsis:** Check deception. Provides a defense for check deception for a person who issues or delivers a check, a draft, or an order for payment on an account with insufficient funds if the person pays the payee or holder the amount due plus protest fees and any service fee or charge imposed by the payee or holder in an amount that may not exceed the greater of: (1) \$25; or (2) 5% of the amount due up to \$250. (Current law provides that the fees and charges imposed by the payee or holder may not exceed the greater of \$20 or 5% of the amount due up to \$250.)

**Effective:** July 1, 2003.

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January 14, 2003, read first time and referred to Committee on Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1425

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-43-5-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) A person who  
3 knowingly or intentionally issues or delivers a check, a draft, or an  
4 order on a credit institution for the payment of or to acquire money or  
5 other property, knowing that it will not be paid or honored by the credit  
6 institution upon presentment in the usual course of business, commits  
7 check deception, a Class A misdemeanor. However, the offense is a  
8 Class D felony if the amount of the check, draft, or order is at least two  
9 thousand five hundred dollars (\$2,500) and the property acquired by  
10 the person was a motor vehicle.  
11 (b) An unpaid and dishonored check, a draft, or an order that has the  
12 drawee's refusal to pay and reason printed, stamped, or written on or  
13 attached to it constitutes prima facie evidence:  
14 (1) that due presentment of it was made to the drawee for payment  
15 and dishonor thereof; and  
16 (2) that it properly was dishonored for the reason stated.  
17 (c) The fact that a person issued or delivered a check, a draft, or an



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order, payment of which was refused by the drawee, constitutes prima facie evidence that the person knew that it would not be paid or honored. In addition, evidence that a person had insufficient funds in or no account with a drawee credit institution constitutes prima facie evidence that the person knew that the check, draft, or order would not be paid or honored.

(d) The following two (2) items constitute prima facie evidence of the identity of the maker of a check, draft, or order if at the time of its acceptance they are obtained and recorded, either on the check, draft, or order itself or on file, by the payee:

(1) Name and residence, business, or mailing address of the maker.

(2) Motor vehicle operator's license number, Social Security number, home telephone number, or place of employment of the maker.

(e) It is a defense under subsection (a) if a person who:

(1) has an account with a credit institution but does not have sufficient funds in that account; and

(2) issues or delivers a check, a draft, or an order for payment on that credit institution;

pays the payee or holder the amount due, together with protest fees and any service fee or charge, which may not exceed the greater of ~~twenty~~ **twenty-five** dollars (~~\$20~~) (**\$25**) or five percent (5%) (but not more than two hundred fifty dollars (\$250)) of the amount due, that may be charged by the payee or holder, within ten (10) days after the date of mailing by the payee or holder of notice to the person that the check, draft, or order has not been paid by the credit institution. Notice sent in the manner set forth in IC 26-2-7-3 constitutes notice to the person that the check, draft, or order has not been paid by the credit institution. The payee or holder of a check, draft, or order that has been dishonored incurs no civil or criminal liability for sending notice under this subsection.

(f) A person does not commit a crime under subsection (a) when:

(1) the payee or holder knows that the person has insufficient funds to ensure payment or that the check, draft, or order is postdated; or

(2) insufficiency of funds or credit results from an adjustment to the person's account by the credit institution without notice to the person.

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